

Foreign-Trade Zones Board, Commerce

§ 400.33

§ 400.32 Procedures for docketing applications and commencement of case review.

(a) Once the pre-docketing copy of the application is determined to be sufficient, the Executive Secretary shall notify the applicant within 15 days so that the applicant may then submit the original and requisite number of copies (which shall be dated upon receipt at the headquarters of the Board) for docketing by the Board. For applications subject to § 400.29, the original shall be accompanied with a check in accordance with that section.

(b) After the procedures described in paragraph (a) of this section are completed, the Executive Secretary shall within 15 days of receipt of the original and required number of copies of the application:

(1) Formally docket the application, thereby initiating the proceeding or review;

(2) Assign a case-docket number; and

(3) Notify the applicant of the formal docketing action.

(c) After initiating a proceeding based on an application under §§ 400.21 and 400.23-400.25, the Executive Secretary shall:

(1) Designate an examiner to conduct a review and prepare a report or memorandum with recommendations for the Board;

(2) Publish in the FEDERAL REGISTER a notice of the formal docketing of the application and initiation of the review. The notice shall include the name of the applicant, a description of the proposal, and an invitation for public comment. If the application requests authority for production activity and indicates that a component to be used in the activity is subject to a trade-related measure or proceeding (*e.g.*, AD/CVD order or proceeding, suspension of liquidation under AD/CVD procedures), the notice shall include that information. For applications to establish or expand a zone or for production authority, the comment period shall normally close 60 days after the date the notice appears. For applications for subzone designation, the comment period shall normally close 40 days after the date the notice appears. However, if a hearing is held (see § 400.52), the comment period shall not

close prior to 15 days after the date of the hearing. The closing date for general comments shall ordinarily be followed by an additional 15-day period for rebuttal comments. Requests for extensions of a comment period will be considered, subject to the standards of § 400.28(c). Submissions must meet the requirements of § 400.28(b). With the exception of submissions by the applicant, any new evidence or new factual information and any written arguments submitted after the deadlines for comments shall not be considered by the examiner or the Board. Submission by the applicant of new evidence or new factual information may result in the (re)opening of a comment period. A comment period may otherwise be opened or reopened for cause;

(3) Transmit or otherwise make available copies of the docketing notice and the application to CBP;

(4) Arrange for hearings, as appropriate;

(5) Transmit the report and recommendations of the examiner and any comments by CBP to the Board for appropriate action; and

(6) Notify the applicant in writing (via electronic means, where appropriate) and publish notice in the FEDERAL REGISTER of the Board's determination.

(d) *CBP review.* Any comments by CBP pertaining to the application shall be submitted to the Executive Secretary by the conclusion of the public comment period described in paragraph (c)(2) of this section.

§ 400.33 Examiner's review—application to establish or modify a zone.

An examiner assigned to review an application to establish, reorganize or expand a zone shall conduct a review taking into account the factors enumerated in § 400.26 and other appropriate sections of this part, which shall include:

(a) Conducting or participating in hearings scheduled by the Executive Secretary;

(b) Reviewing case records, including public comments;

(c) Requesting information and evidence from parties of record;

(d) Developing information and evidence necessary for evaluation and

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analysis of the application in accordance with the criteria of the Act and this part; and

(e) Developing recommendations to the Board and submitting a report to the Executive Secretary, generally within 150 days of the close of the period for public comment (75 days for reorganizations under the ASF) (see § 400.32):

(1) If the recommendations are unfavorable to the applicant, they shall be considered preliminary and the applicant shall be notified in writing (via electronic means, where appropriate) of the preliminary recommendations and the factors considered in their development. The applicant shall be given 30 days from the date of notification, subject to extensions upon request by the applicant, which shall not be unreasonably withheld, in which to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

(2) If the response contains new evidence on which there has been no opportunity for public comment, the Executive Secretary shall publish a notice in the FEDERAL REGISTER after completion of the review of the response. The new material shall be made available for public inspection and the FEDERAL REGISTER notice shall invite further public comment for a period of not less than 30 days, with an additional 15-day period for rebuttal comments.

(3) If the bases for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ 400.33(e)(1) and (2) shall be followed.

(4) When necessary, a request may be made to CBP to provide further comments, which shall be submitted within 45 days after the request.

§ 400.34 Examiner's review—application for production authority.

(a) The examiner shall conduct a review taking into account the factors enumerated in this section, § 400.27, and other appropriate sections of this part, which shall include:

(1) Conducting or participating in hearings scheduled by the Executive Secretary;

(2) Reviewing case records, including public comments;

(3) Requesting information and evidence from parties of record and others, as warranted;

(4) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in § 400.27; and

(5) Conducting an analysis to include:

(i) An evaluation of policy considerations pursuant to §§ 400.27(a)(1) and (2);

(ii) An evaluation of the economic factors enumerated in §§ 400.27(a)(3) and 400.27(b), which shall include an evaluation of the economic impact on domestic industry, considering both producers of like products and producers of components/materials used in the production activity;

(iii) Conducting appropriate industry research and surveys, as necessary; and

(iv) Developing recommendations to the Board and submitting a report to the Executive Secretary, generally within 150 days of the close of the period for public comment (although additional time may be required in circumstances such as when the applicant or other party has obtained a time extension for a particular procedural step):

(A) If the recommendations are unfavorable to the applicant, they shall be considered preliminary and the applicant shall be notified in writing (via electronic transmission where appropriate) of the preliminary recommendations and the factors considered in their development. The applicant shall be given 45 days from the date of notification in which to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary shall publish notice in the FEDERAL REGISTER after completion of the review of the response. The new material shall be made